

REMARKS

I. Summary of Office Action

Claims 1-71 are pending in this application.

Claims 1-71 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Brenner et al. U.S. Patent No. 6,099,409 (hereinafter "Brenner") in view of LaDue U.S. Patent No. 5,999,808 (hereinafter "LaDue") and further in view of the "MOGID: Mobile Geo-Depended Information on Demand" article (hereinafter "MOGID").

II. Summary of Applicants' Reply

Applicants have amended claims 1, 32, 35-37, 40, and 41 to more particularly define applicants' invention. The amendments of the claims are fully supported by applicants' specification as originally filed and therefore do not add new matter.

The rejection of claims 1-71 under 35 U.S.C. § 103(a) is respectfully traversed.

III. Applicants' Reply to the Office Action

As amended, applicants' independent claims 1, 32, 35-37, 40 and 41 are generally directed toward interactive wagering on races with a cellular telephone. Racing data on races that have not been run and that a user is allowed to place wagers on is received at the cellular telephone. After

the racing data has been received, a user is allowed to select to present the received racing data in audio form or visual form, and the racing data is presented on the cellular telephone based on the user selection.

The Office Action admits that neither Brenner nor LaDue teaches "the ability to select to present the racing data in audio form or visual form." (Office Action, page 5). Nevertheless, the Office Action opines that the device profile function in the MOGID article teaches this missing feature and that it would have been obvious to combine the device profile function of the MOGID article with Brenner and LaDue. Applicants respectfully disagree.

A. The Combination of Brenner, LaDue, and
 MOGID Fails to Show or Suggest Allowing a
 User to Select to Present Racing Data In
 Audio or Visual Form After the Racing Data
 Has Been Received at a Cellular Telephone

The MOGID article refers to a GSM based positioning system. Once a GSM cellular telephone locates its position using a number of GSM antennae, the GSM cellular telephone connects to the MOGID server, which provides various information to the user based on the user's position. The GSM cellular telephone may inform the MOGID server of its capabilities using preference data, or a device profile. (MOGID, page 3). The MOGID article defines the device profile as "a collection of information which describes the capabilities, hardware, system software and applications used

by someone accessing the MOGID server, as well as particular preferences of the users themselves." Id. The device profile is stored at the MOGID server. Id.

Although the MOGID device profiles may include device information indicating whether audio and/or video is supported on a GSM cellular telephone accessing the MOGID server, a user may not select to present received information in audio or visual form after the information has been received, as recited by applicants' independent claims 1, 32, 35-37, 40 and 41. For example, using applicants' invention, if the user selects to present the received racing data in visual form, the racing data is presented visually to the user using the cellular telephone (e.g., using the telephone's associated display). If the user selects to present the received racing data in audio form, the racing data is presented audibly to the user using the cellular telephone (e.g., using the telephone's associated speaker).

Applicants' specification teaches that racing data may be provided to the cellular telephones over the voice channel or any other suitable cellular or wireless path. (Specification, page 25, lines 19-23). Applicants' specification further teaches that a user may select to present the received racing data in audio or visual form "[r]egardless of the way in which racing data and other information are provided to the cellular telephone." (Specification, page 25, lines 24-30).

In contrast, the MOGID server uses audio on/off and video on/off profile data to limit the content transmitted to the user devices. For example, if the video flag is set to "on" and the audio flag is set to "on," then webpages with video and audio content may be transmitted to the GSM cellular telephone. If a GSM cellular telephone does not support video (e.g., the device does not have display capabilities), then the video flag may be set to "off," thus informing the MOGID server not to transmit video content to the GSM cellular telephone. (See MOGID, page 3).

Accordingly, MOGID fails to disclose that a user can select to present information in audio or visual form after receiving the information. As explained in the February 8, 2006 Reply to Office Action, the mere ability for a device to receive a certain type of communication--either audio or visual--does not suggest the ability to allow a user to select to present a particular communication in either of these forms.

Moreover, since the combination of Brenner, LaDue, and MOGID fails to show or suggest allowing a user to select to present the racing data in audio or video form after receiving the racing data, the combination consequently also fails to show or suggest the presentation of the racing data on the cellular telephone based on the user selection, as also required by each of applicants' independent claims.

For at least the foregoing reasons, applicants respectfully submit that independent claims 1, 32, 35-37, 40, and 41 are allowable over the prior art of record. Dependent claims 2-31, 33, 34, 38, 39, and 42-71, which contain all the limitations of their respective independent claims, are allowable for at least the same reasons. Applicants respectfully request, therefore, that the rejection under 35 U.S.C. § 103(a) be withdrawn.

B. There is Insufficient Motivation to Combine MOGID with the Combination of Brenner and LaDue

In addition, the Office Action did not provide sufficient motivation for combining MOGID with the combination of Brenner and LaDue. See In re Rouffet, 149 F.3d 1350, 1355 (Fed. Cir. 1998) ("When a rejection depends on a combination of prior art references, there must be some teaching, suggestion, or motivation to combine the references"). See also MPEP §§ 2142 and 2143.01. The Office Action merely contends that it would have been obvious to combine MOGID with the combination of Brenner and LaDue "to allow the user to select audio only, video only, or both audio and video according to the hardware capability of the user's device." (Office Action, p. 4). Applicants respectfully disagree.

LaDue's CCAD gaming communicator 100, which the Examiner contends would have been obvious to use in Brenner's interactive wagering system, is capable of receiving and

presenting both audio and visual data. (See LaDue, column 10, lines 40-67). LaDue does not disclose any CCAD gaming communicators 100 that have limited audio or video capability. Because LaDue's CCAD gaming communicators 100 support both audio and video, applicants submit that there would be no motivation for one skilled in the art to incorporate MOGID's device profiles into Brenner's interactive wagering system using LaDue's CCAD communicator, particularly not for the "hardware capability" motivation proffered by the Examiner.

In fact, MOGID is primarily directed to a very different problem than LaDue and Brenner and is in a very different field of endeavor. Unlike Brenner and LaDue, MOGID is not related to the domain of interactive gaming or wagering. Rather, MOGID is primarily concerned with geographic location techniques using GSM cellular networks. Although MOGID utilizes a GSM cellular network and LaDue's CCAD gaming communicators include cellular support, this fact alone would not motivate one skilled in the art of interactive wagering and gaming to look to the field of GSM location techniques. Without some objective evidence of a motivation to combine, the obviousness rejection is the "essence of hindsight" reconstruction, the very "syndrome" that the requirement for such evidence is designed to combat, and insufficient as a matter of law. In re Dembiczak, 50 U.S.P.Q.2d 1614, 1617-18 (Fed. Cir. 1999).

Accordingly, for at least the foregoing reasons, applicants submit that independent claims 1, 32, 35-37, 40 and 41 are allowable over the prior art of record. Dependent claims 2-31, 33-34, 38-39, and 41-71, which include all the limitations of their respective independent claims, are allowable for at least the same reasons.

IV. Conclusion

For the reasons set forth above, claims 1-71 are allowable over the prior art of record. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,



James A. Leiz
Reg. No. 46,109
Attorney for Applicants
Fish & Neave IP Group
Ropes & Gray LLP
Customer No. 1473
1211 Avenue of the Americas
New York, New York 10036
Tel.: (212) 596-9000